



ARKANSAS JUDICIARY

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Rule 52. Findings By The Court.

(a)(1) Effect. If requested by a party at any time prior to entry of judgment, in all contested actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous (clearly against the preponderance of the evidence), and due regard shall be given to the opportunity of the circuit court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under these rules.

(2) Allocation of Fault. (A) In an action for personal injury, medical injury, wrongful death, or property damage tried without a jury, the court shall determine the fault of all persons or entities, including those not made parties, who may have joint liability or several liability for the alleged injury, death, or damage to property. However, the court shall determine the fault of a nonparty only if:

(i) the claimant entered into a settlement agreement with the nonparty, or a defending party has given notice, as provided in Rule 9(h), that the nonparty was wholly or partially at fault; and

(ii) the defending party has carried the burden of establishing a prima facie case of the nonparty's fault.

(B) The court shall allocate fault, on a percentage basis, among those persons or entities, including those not made parties, found to have contributed to the injury, death, or property damage.

(C) Assessment of the percentage of a nonparty's fault shall be used only for determining the percentage of fault of the parties. A finding of fault shall not subject a nonparty to liability in any act or be introduced as evidence of liability in any action.

(b) Amendment.

(1) Upon motion of a party made not later than 10 days after entry of judgment, the court may amend its findings of fact previously made or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial

pursuant to Rule 59. A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.

(2) When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the circuit court an objection to such findings or has made a motion to amend them or a motion for judgment.

Comment Text:

Reporter's Notes to Rule 52: - 1. Rule 52 is similar to FRCP 52, but it retains prior Arkansas law by which the failure of a party to request special findings of fact by the court amounted to a waiver of that right. *Anderson v. West Bend Co.*, 240 Ark. 519, 400 S.W.2d 495 (1966); *Doup v. Almand*, 212 Ark. 687, 207 S.W.2d 601 (1948).

2. Prior Arkansas law was codified in superseded Ark. Stat. Ann. 27-1744 (Repl. 1962) which required the trial court to state findings of fact separately from conclusions of law. Where there was any substantial evidence to support the findings of the circuit judge, his decision had to be affirmed on appeal. *Fanning v. Hembree Oil Company*, 245 Ark. 825, 434 S.W.2d 822 (1968). Under this rule, the findings of the trial judge must be affirmed on appeal unless clearly erroneous, which is the same as clearly against the preponderance of the evidence. The rule, however, does not alter the fact that in some cases an issue must be proved by clear and convincing evidence.

3. Section (b) does not appreciably change prior Arkansas law, as it has been commonly understood that courts had the inherent power to amend its findings or make additional findings during term time. See *Vaughn v. Vaughn*, 223 Ark. 934, 270 S.W.2d 915 (1954), although this power was severely restricted after term time to those grounds specified in superseded Ark. Stat. Ann. 29-506 (Repl. 1962).

4. Under this rule, motions to have the court amend its findings or make additional findings must be filed within ten days after the entry of judgment. This time period cannot be extended by the trial court as provided in Rule 6 herein and in FRCP 6.

Addition to Reporter's Note, 1989 Amendment: - Rule 52(a) is amended to make clear that the same standard of appellate review applies, regardless of whether a trial court's findings of fact are based on oral or documentary evidence. The corresponding federal rule was so amended in 1985. Prior to that amendment, some federal courts had held that a more searching appellate review was appropriate when the trial court's findings were based solely on documentary evidence.

Addition to Reporter's Notes, 1999 Amendment: - Subdivision (b) has been divided into two numbered paragraphs. The new third sentence of paragraph (1) makes plain that a pre-judgment motion to amend findings or to make additional findings is permissible. This is so under the corresponding federal rule, but prior Arkansas case law suggested that such a motion was not effective. See *Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997) (motion for new trial). The new fourth sentence provides that a motion to amend findings or for additional findings not ruled on by the court within 30 days of its filing (or

within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(b)(1) of the Rules of Appellate Procedure - Civil but was added here as a reminder to counsel. Addition to Reporter's Notes, 2001 Amendment: - The references to "trial court" in subdivisions (a) and (b)(2) have been replaced with "circuit court." Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate probate and chancery courts.

Addition to Reporter's Notes, 2004 Amendment: - Subdivision (a) has been amended to make plain that a request for findings of fact and conclusions of law may be made "at any time prior to entry of judgment." A companion change in subdivision (b)(1) emphasizes that a motion after entry of judgment pursuant to that provision is for a different purpose, i.e., to amend findings "previously made" or to make additional findings. The effect of these changes is to overrule *Apollo Coating RSC, Inc. v. Brookridge Funding Corp.*, 103 S.W.3d 682 (Ark. App. 2003), which held that a motion for findings and conclusions pursuant to Rule 52(a) could be made after entry of judgment.

Addition to Reporter's Notes (2014 Amendment): The text of subdivision (a) has been designated as paragraph (1) and paragraph (2) has been added. The latter implements Ark. Code Ann. §§ 16-61-201 & 16-61-202(c), as amended by Act 1116 of 2013. It is based in part on section 2 of Act 649 of 2003, codified at Ark. Code Ann. § 16-55-202(a), which was invalidated on separation-of-powers grounds in *Johnson v. Rockwell Automation, Inc.*, 2009 Ark. 241, 308 S.W.3d 135. A corresponding change has been made in Rule 49, which applies to jury verdicts. For discussion, see the notes accompanying that rule.

History Text:

History. Amended November 20, 1989, effective January 1, 1990; amended January 28, 1999; amended May 24, 2001, effective July 1, 2001; amended January 22, 2004; amended August 7, 2014, effective January 1, 2015.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VI. Trials

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